

By: Davis

S.B. No. 1625

A BILL TO BE ENTITLED

AN ACT

1
2 relating to standards and procedures for determining whether a
3 person who owns, operates, or manages a pipeline is a common
4 carrier.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 111.002, Natural Resources Code, is
7 amended to read as follows:

8 Sec. 111.002. COMMON CARRIERS UNDER CHAPTER. (a) Except as
9 provided by Subsection (b), a [A] person is a common carrier subject
10 to the provisions of this chapter if it:

11 (1) owns, operates, or manages a pipeline or any part
12 of a pipeline in the State of Texas for the transportation of crude
13 petroleum to or for the public for hire, or engages in the business
14 of transporting crude petroleum by pipeline;

15 (2) owns, operates, or manages a pipeline or any part
16 of a pipeline in the State of Texas for the transportation of crude
17 petroleum to or for the public for hire and the pipeline is
18 constructed or maintained on, over, or under a public road or
19 highway, or is an entity in favor of whom the right of eminent
20 domain exists;

21 (3) owns, operates, or manages a pipeline or any part
22 of a pipeline in the State of Texas for the transportation of crude
23 petroleum to or for the public for hire which is or may be
24 constructed, operated, or maintained across, on, along, over, or

1 under the right-of-way of a railroad, corporation, or other common
2 carrier required by law to transport crude petroleum as a common
3 carrier;

4 (4) under lease, contract of purchase, agreement to
5 buy or sell, or other agreement or arrangement of any kind, owns,
6 operates, manages, or participates in ownership, operation, or
7 management of a pipeline or part of a pipeline in the State of Texas
8 for the transportation of crude petroleum, bought of others, from
9 an oil field or place of production within this state to any
10 distributing, refining, or marketing center or reshipping point
11 within this state;

12 (5) owns, operates, or manages, wholly or partially,
13 pipelines for the transportation for hire of coal in whatever form
14 or of any mixture of substances including coal in whatever form;

15 (6) owns, operates, or manages, wholly or partially,
16 pipelines for the transportation of carbon dioxide or hydrogen in
17 whatever form to or for the public for hire, but only if such person
18 files with the commission a written acceptance of the provisions of
19 this chapter expressly agreeing that, in consideration of the
20 rights acquired, it becomes a common carrier subject to the duties
21 and obligations conferred or imposed by this chapter; or

22 (7) owns, operates, or manages a pipeline or any part
23 of a pipeline in the State of Texas for the transportation of
24 feedstock for carbon gasification, the products of carbon
25 gasification, or the derivative products of carbon gasification, in
26 whatever form, to or for the public for hire, but only if the person
27 files with the commission a written acceptance of the provisions of

1 this chapter expressly agreeing that, in consideration of the
2 rights acquired, it becomes a common carrier subject to the duties
3 and obligations conferred or imposed by this chapter.

4 (b) A person is not a common carrier subject to the
5 provisions of this chapter unless the person owns, operates, or
6 manages a pipeline for hire by another person who is not an
7 affiliate of the person who owns, operates, or manages the
8 pipeline.

9 (c) For the purposes of this section, "affiliate" means:

10 (1) a person who directly or indirectly owns or holds
11 at least five percent of the voting securities of a person who owns,
12 operates, or manages a pipeline;

13 (2) a person in a chain of successive ownership of at
14 least five percent of the voting securities of a person who owns,
15 operates, or manages a pipeline;

16 (3) a corporation that has at least five percent of its
17 voting securities owned or controlled, directly or indirectly, by a
18 person who owns, operates, or manages a pipeline;

19 (4) a corporation that has at least five percent of its
20 voting securities owned or controlled, directly or indirectly, by:

21 (A) a person who directly or indirectly owns or
22 controls at least five percent of the voting securities of a person
23 who owns, operates, or manages a pipeline; or

24 (B) a person in a chain of successive ownership
25 of at least five percent of the voting securities of a person who
26 owns, operates, or manages a pipeline;

27 (5) a person who is an officer or director of a person

1 who owns, operates, or manages a pipeline or of a corporation in a
2 chain of successive ownership of at least five percent of the voting
3 securities of a person who owns, operates, or manages a pipeline; or

4 (6) a person determined to be an affiliate under
5 Subsection (d).

6 (d) The commission may determine that a person is an
7 affiliate for purposes of this section if the commission after
8 notice and hearing finds that the person:

9 (1) actually exercises substantial influence or
10 control over the policies and actions of a person who owns,
11 operates, or manages a pipeline;

12 (2) is a person over whom a person who owns, operates,
13 or manages a pipeline exercises the control described by
14 Subdivision (1);

15 (3) is under common control with a person who owns,
16 operates, or manages a pipeline; or

17 (4) actually exercises substantial influence over the
18 policies and actions of a person who owns, operates, or manages a
19 pipeline in conjunction with one or more persons with whom the
20 person is related by ownership or blood relationship, or by action
21 in concert, that together they are affiliated with the person who
22 owns, operates, or manages the pipeline within the meaning of this
23 section even though neither person may qualify as an affiliate
24 individually.

25 (e) For purposes of Subsection (d)(3), "common control with
26 a person who owns, operates, or manages a pipeline" means the direct
27 or indirect possession of the power to direct or cause the direction

1 of the management and policies of another, without regard to
2 whether that power is established through ownership or voting of
3 securities or by any other direct or indirect means.

4 SECTION 2. Subchapter B, Chapter 111, Natural Resources
5 Code, is amended by adding Sections 111.0121, 111.0122, 111.0123,
6 and 111.0124 to read as follows:

7 Sec. 111.0121. COMMON CARRIER PERMIT AUTHORITY. The
8 commission may not issue a permit to operate a pipeline as a common
9 carrier to a person unless:

10 (1) the commission determines under Section 111.0122
11 that the person is a common carrier under Section 111.002; and

12 (2) the commission does not receive a protest under
13 Section 111.0123 or the State Office of Administrative Hearings
14 determines following a hearing on a protest under that section that
15 the person is a common carrier under Section 111.002.

16 Sec. 111.0122. COMMON CARRIER APPLICATION AND
17 DETERMINATION. (a) An application to operate a pipeline as a common
18 carrier must be submitted in a manner satisfactory to the
19 commission and must include:

20 (1) a description of the point of origin and point of
21 destination of the pipeline;

22 (2) the names of any customers of the applicant who
23 intend to use the applicant's pipeline and an indication of whether
24 each customer is an affiliate as defined by Section 111.002(c);

25 (3) the names of the substances the applicant plans to
26 transport in the pipeline for each customer named in the
27 application;

1 (4) the volume of the substances the applicant plans
2 to transport in the pipeline for each customer named in the
3 application;

4 (5) the intended destination of the substances; and

5 (6) an affidavit signed by an officer of the applicant
6 affirming that the information in the application is accurate.

7 (b) The commission shall notify the applicant in writing of
8 its determination of whether the applicant is a common carrier
9 under Section 111.002.

10 (c) The commission shall make available to the public any
11 information submitted to the commission under this section that is
12 not specifically identified as confidential by the applicant.

13 Sec. 111.0123. NOTICE OF AND HEARING ON DETERMINATION. (a)
14 Not later than the 30th day after the date the commission notifies
15 an applicant for a permit to operate a pipeline as a common carrier
16 that the commission has determined under Section 111.0122 that the
17 applicant is a common carrier under Section 111.002, the commission
18 shall send written notice to each owner of land proposed to be
19 crossed by the pipeline of the commission's determination.

20 (b) The notice must include:

21 (1) a statement that a determination that the person
22 is a common carrier confers the power of eminent domain on the
23 person;

24 (2) a description of the point of origin and point of
25 destination of the proposed pipeline; and

26 (3) a description of the procedure for protesting the
27 determination.

1 (c) A person who receives notice under this section may file
2 a written protest of a determination with the commission not later
3 than the 30th day after the date the person receives the notice. If
4 the commission receives a protest under this subsection, the
5 commission shall refer the protest to the State Office of
6 Administrative Hearings for a hearing. A protest under this
7 section is a contested case under Chapter 2001, Government Code.

8 (d) Not later than the 30th day after the date the
9 commission refers a protest to the State Office of Administrative
10 Hearings, the office shall:

11 (1) conduct a hearing on the protest;

12 (2) make a final determination of the protest
13 following the hearing; and

14 (3) notify the commission of the office's
15 determination.

16 Sec. 111.0124. COMMON CARRIER REPORT. (a) Not later than
17 the last day of the 18th month after the date a person receives a
18 permit to operate a pipeline as a common carrier, the person shall
19 submit to the commission a report on the pipeline. The report must
20 include:

21 (1) a description of the person's efforts to offer the
22 pipeline for hire;

23 (2) the names of any customers of the person who paid
24 for the use of the pipeline after the date the person received the
25 permit, and an indication of whether each customer is an affiliate
26 as defined by Section 111.002(c);

27 (3) the names of the substances transported in the

1 pipeline;

2 (4) the volume of the substances transported in the
3 pipeline for each customer named in the report; and

4 (5) the destination of the substances transported in
5 the pipeline.

6 (b) The commission may revoke a permit issued to a person
7 who submits a report under this section if the commission
8 determines that the report indicates that the person is not a common
9 carrier under Section 111.002.

10 (c) The commission shall make available to the public any
11 information submitted to the commission under this section that is
12 not specifically identified as confidential by the permit holder.

13 SECTION 3. The changes in law made by this Act relating to a
14 permit to operate a pipeline apply only to a permit the application
15 for which is filed with the Railroad Commission of Texas on or after
16 the effective date of this Act. A permit the application for which
17 was filed before the effective date of this Act is governed by the
18 law in effect on the date the application was filed, and the former
19 law is continued in effect for that purpose.

20 SECTION 4. Not later than January 1, 2014, the Railroad
21 Commission of Texas shall adopt rules to implement the changes in
22 law made by this Act to Chapter 111, Natural Resources Code.

23 SECTION 5. This Act takes effect September 1, 2013.